IN THE

Supreme Court of the United States

——— TERM, 1979

No. 78-1100

LISA BLAMEY, a minor, by her mother and natural guardian, SHIRLEY BLAMEY,

Plaintiff-Respondent,

vs.

THORWALD BROWN, a/k/a TED BROWN, TED BROWN'S BAR AND OVERSHOE CLUB,

Defendant-Petitioner.

On Appeal From the Supreme Court of Minnesota

PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

A. The Order of the Hennepin County District Court, Fourth Judicial District of Minnesota, dated May 27, 1977 was not reported. A copy of this Order is annexed hereto as Appendix A.

B. The decision of the Minnesota Supreme Court which affirmed the Hennepin County District Court's Order, dated September 1, 1971, is reported at 270 N.W. 2d 884. A copy of the Court's opinion is attached hereto as Appendix B.

C. The Order of the Minnesota Supreme Court denying the Defendant-Petitioner's Petition for a Rehearing was not reported. A copy of the Order is attached hereto as Appendix D.

GROUNDS ON WHICH JURISDICTION IS INVOLVED

The judgment sought to be reviewed was entered on November 7, 1978. A copy of the judgment is attached hereto as Appendix E.

The Supreme Court's Order denying Defendant-Petitioner's Petition for Rehearing, attached hereto as Appendix D, was entered November 3, 1978.

The statutory provision conferring upon this Court jurisdiction to review the judgment of the Minnesota Supreme Court is 28 U.S.C. Section 1257(3), which provides, in part, as follows:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> (3) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

This Petition for Writ of Certiorari is timely filed pursuant to 21 U.S.C. Section 2101, Subdivision c.

QUESTION PRESENTED

This is a civil action brought in Minnesota under Minnesota's Civil Damage Act, Minnesota Statutes, Section 340.95, and common law negligence, arising from a sale of alcoholic beverages in Wisconsin which subsequently caused or contributed to personal injury to the Plaintiff in Minnesota. The question presented for review is whether the Defendant-Petitioner tavern owner, whose residence and place of business were located in Wisconsin, who had no property and conducted no business in Minnesota, who purchased the entire inventory for the tavern in Wisconsin, and who did not advertise or engage in any other activities to attract Minnesota residents to his place of business, has sufficient minimum contacts with the State of Minnesota so as to make it fair and reasonable for the Defendant-Petitioner to be subjected to the in personam jurisdiction of the Courts of Minnesota without violating the due process clause of the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL PROVISION INVOLVED

The constitutional basis for this Petition is the United States Constitution, Amendment Fourteen, Section One, which provides as follows:

> "All persons born or naturalized in the United States, subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process

of law, or deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

I.

FACTS

On the evening of October 23, 1974 the Plaintiff, then 15 years old, attended a beer party in the Minneapolis-Saint Paul area with friends, including one Patrick Martin. After the party Plaintiff, Mr. Martin and others drove to Hudson. Wisconsin, where Martin, then 17 years old, allegedly purchased alcoholic beverages at the Defendant-Petitioner's tavern. Sometime thereafter in the early morning hours of October 24, 1974, an automobile operated by Martin and occupied by the Plaintiff as a passenger was involved in an accident in Minnesota. At that time, both Patrick Martin and the Plaintiff were residents of Minnesota.

On the date of the alleged illegal sale the Defendant-Petitioner, Thorwald Brown, was the sole proprietor of the Overshoe Club, also known as Ted Brown's Liquors. His only place of business was 304 Second Avenue, Hudson, Wisconsin. He operated this business pursuant to a Class B Liquor License issued by the City of Hudson. Both intoxicating liquor and fermented malt beverages were sold on and off sale. The Overshoe Club was a neighborhood, working-man's bar. There was no live entertainment, juke box or game machines. He had seating at the bar, and three tables, for approximately 20 people. While the Defendant-Petitioner was in business he never advertised in Minnesota or in any other way attempted to attract Minnesota residents, or young people, to his establishment.

The Defendant-Petitioner had no business connections in Minnesota. The entire inventory for the bar was purchased in Wisconsin. Because the Defendant did not operate in Minnesota, or in any other state which had similar civil damage laws, he was not covered by any liquor liability insurance.

Prior to the commencement of this action, the Defendant-Petitioner sold his business in Wisconsin and retired with his wife to Arizona. He has lived permanently in that state since May, 1976.

II.

PROCEDURAL HISTORY

This action was commenced on December 30, 1976 by the Plaintiff, who seeks to recover damages for the personal injuries she sustained pursuant to Minnesota Statutes, Section 340.95 and the Minnesota Common Law of Negligence. The Complaint was allegedly served on the Defendant pursuant to Minnesota's long arm statute, Minnesota Statutes, Section 543.91, Subdivision 1(c). The Defendant interposed an Answer to the Complaint and alleged, among other defenses, that the Minnesota District Court lacked personal jurisdiction over the Defendant.

Subsequently, the Defendant made a pre-trial Motion in District Court to dismiss the Complaint because the Court lacked personal jurisdiction. At the same time the Plaintiff made a Pre-Trial Motion to strike the jurisdictional defense from the Defendant's Answer. The Motion was heard in the Hennepin County District Court on May 9, 1977. On May 27, 1977 the District Court granted Plaintiff's Motion to strike the jurisdictional defense and denied the Defendant's Motion.

On June 16, 1977 the Defendant appealed to the Minnesota Supreme Court pursuant to Rule 103.03 of the Minnesota Rules of Civil Appellate Procedure. See, *Hunt v. Nevada State Bank*, 285 Minn. 77, 172 N.W. 2d 292 (1969). *Great Northern Oil Company v. St. Paul Fire and Marine Insurance Company*, 291 Minn. 97, 189 N.W. 2d 404 (1971).

The Minnesota Supreme Court, in its opinion filed on September 1, 1978, held that the exercise of personal jurisdiction by the State of Minnesota over Defendant Brown was consistent with due process requirements of the United States Constitution.

On September 15, 1978 the Defendant filed a Petition for Rehearing, pursuant to Rule 140 of the Minnesota Rules of Civil Appellate Procedure. By Rule 140 and by Order of the Minnesota Supreme Court dated September 15, 1978, (copy of which is attached as Appendix C), entry of judgment was stayed during the pendency of the Petition for Rehearing. The Petition was denied by Order of the Supreme Court on November 3, 1978 (see Appendix D).

ARGUMENT

I.

THERE ARE NO PURPOSEFUL MINIMAL CONTACTS BETWEEN DEFENDANT AND FORUM STATE.

It is the Defendant's position that he did not have sufficient minimum contacts with the State of Minnesota to support the constitutional exercise of personal jurisdiction over him. Therefore, the Minnesota Supreme Court's decision is not in accord with the due process clause of the Fourteenth Amendment and previous decisions of the

United States Supreme Court. *Hanson v. Denckla*, 357 U.S. 235 (1958); *Shaffer v. Heitner*, 433 U.S. 186 (1977); *Kulko v. Superior Court*, 98 S. Ct. 3127 (1978); *State Ex Rel Sperandio v. Clymer*, 99 S. Ct. 69 (1978). See also, *Northwestern National Bank of Saint Paul v. Kratt*, — Minn. —, 226 N.W. 2d 910 (1975).

A state may exercise personal jurisdiction over a defendant in a civil litigation only if that defendant has "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Company v. State of Washington*, 326 U.S. 310 (1945). However, the defendant's contact with the forum state must be *purposeful*. That is, the contacts must be such that the "defendant purposefully avails (himself) of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws". *Hanson v Denckla, supra.*

In this case, the Minnesota Supreme Court cited the following contacts to satisfy constitutional standards set forth in the *International Shoe* and *Hanson cases:*

1. The proximity of the Defendant's tavern to the Minnesota/Wisconsin state borders.

2. The existence of an interstate highway near the town wherein Defendant's tavern was located.

3. The existence of a large urban area (Minneapolis-Saint Paul, Minnesota) within 15 miles of the town wherein Defendant's tavern was located.

4. Wisconsin liquor regulations permitted a Wisconsin tavern to remain open longer than a Minnesota tavern.

None of the above-listed "contacts" constitute *purposeful* acts by the Defendant. He had nothing to do with the placement of State borders, interstate highways or urban areas. He also was not responsible for the adoption of Wisconsin's liquor regulations. The Defendant did not reside or conduct any business in Minnesota. He didn't advertise in Minnesota Therefore, the Defendant did not purposefully avail himself to the privilege of conducting business in Minnesota.

The four items above do not constitute contacts between the Defendant and the State of Minnesota. The Minnesota Supreme Court, in its opinion, stated that these items created a "reasonable inference" that the Defendant had contacts with Minnesota residents. The Defendant agrees that these facts made his tavern accessible to Minnesota residents. However, accessibility is not a standard to determine whether the exercise of personal jurisdiction over the Defendant is constitutional. The standard is purposeful contacts between the Defendant and the forum state to such an extent that it is just to require him to defend the lawsuit in that State. That standard has not been met here.

II.

ONLY A DEFENDANT'S CONTACTS WITH FORUM STATE CAN SATISFY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

In deciding the issue of personal jurisdiction the Minnesota Supreme Court applied a five part test, with includes the following for consideration:

1. The interest of the forum state in providing a forum.
2. The convenience of the parties.

Aftanase v. Economy Baler Company, 343 F. 2d 187 (8th Cir. 1965). However, it was improper to apply these factors in determining whether the exercise of personal jurisdiction over the Defendant was in accord with the due process clause of the Fourteenth Amendment. The Court in *Hanson v. Denckla, supra,* and *Kulko v. Superior Court, supra,* held that such factors are not determinative: *That purposeful minimum contacts* between the defendant and the forum state is the test.

The *Kulko* case involved a child support action brought in California against a New York resident. The Court stated:

> "In seeking to justify the burden that would be imposed on appellant for the exercise of in personam jurisdiction in California [forum state] sustained, appellee argues that California has substantial interests in protecting the welfare of its minor residents and in promoting to the fullest extent possible a healthy and supportive family environment in which the children of the state are to be raised. These interests are unquestionably important. But, while the presence of the children and one parent in California arguably might favor application of California law in a lawsuit in New York, the fact that California may be the 'center of gravity' for choice of law purposes does not mean that California has personal jurisdiction over the defendant. Hanson v. Denckla, supra, 357 U.S. at 254.
>
> * * *
>
> It cannot be disputed that California has substantial interests in protecting resident children and in facilitating child support actions on behalf of those children. *But these interests simply do not make California a 'fair forum'.* Shaffer v. Heitner, supra, 433

> U.S. at 215, in which to require appellant, who derives no personal or commercial benefit from his child's presence in California and who lacks any other relevant contact with the state, either to defend a child support suit or to suffer liability by default."

An analysis of the Minnesota Supreme Court's opinion in the instant case shows that it did weigh the interest of the state in providing a forum and the convenience of the parties in their determination of whether personal jurisdiction existed. The inclusion of those factors to determine this issue (as opposed to the choice of law issue) is clearly contrary to the law set forth in *Hanson* and *Kulko*.

Likewise, the residence of the Plaintiff in the forum state and her activities therein cannot be used to uphold a personal jurisdiction. As stated by the Court in *Hanson v. Denckla, supra:*

> "The unilateral activity of those who claim some relationship with a non-resident defendant *cannot* satisfy the requirement of contact with the forum state. The application of that rule will vary with the quality and nature of the defendant's activity, but *it is essential in each case* that there be some act by which the defendant purposefully avails (himself) of the privilege of conducting activities in the forum state. . . ." (Emphasis added).

Although it was the Plaintiff (and companions) who left the large urban area of Minneapolis-Saint Paul, and drove on the interstate highway to the state border, and took advantage of the later closing hours of Wisconsin taverns, it is significant that the Defendant neither advertised nor solicited any business in Minnesota.

The law set forth in *Hanson v. Denckla, supra,* and *Kulko v. Superior Court, supra,* is clear. There does exist a limit on a state's power to exercise jurisdiction over a non-resident defendant. That limit is established by the requirement that there be *purposeful minimal contacts* on the part of the non-resident, over and above any unilateral activity on the part of the Plaintiff. Additionally, these cases hold that a state's interest in providing a forum and the convenience of the parties do not satisfy the due process requirement.

CONCLUSION

On the principles set forth in *Hanson* and *Kulko,* Defendant-Petitioner urges the Court to grant a Writ of Certiorari in this case or, in the alternative, reverse in all respects the Judgment and Decree of the Minnesota Supreme Court.

Respectfully submitted,

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APPENDIX A

STATE OF MINNESOTA — DISTRICT COURT
County of Hennepin — Fourth Judicial District

LISA BLAMEY, a minor, by her mother and natural guardian, SHIRLEY BLAMEY,

Plaintiff,

vs.

THORWALD BROWN, a/k/a TED BROWN, TED BROWN'S BAR AND OVERSHOE CLUB,

Defendants.

ORDER

File No. 734819

The above entitled matter came on for hearing before the Court, the Honorable Judge William S. Posten, District Judge, at Special Term, on May 9, 1977 at the Government Center in the City of Minneapolis, Minnesota at 9:30 o'clock a.m., upon plaintiff's motion for an Order pursuant to 12.06 of the Minnesota Rules of Civil Procedure striking the following defenses pleaded in the defendant's answer: a. The District Court, County of Hennepin, Fourth Judicial District lacks personal jurisdiction of the defendant; b. That process and service of process are inadequate and insufficient; c. That the Complaint fails to state a claim against this defendant upon which relief can be granted; and d. That the Court herein lacks jurisdiction over the subject matter of this litigation.

The Court heard at the same time defendant's motion for an Order granting the following:

a. An Order dismissing the plaintiff's Complaint for failure to state a claim against defendant upon which relief can be granted.

b. For an Order dismissing the Complaint on the basis that the Court herein lacks jurisdiction over the person of the defendant.

c. For an Order granting the defendant summary judgment against plaintiff.

Based upon all of the files, proceedings, affidavits, memorandums of law and oral arguments presented by Norman L. Newhall of Lindquist and Vennum and Steven B. Schmidt of Wright, Roe & Schmidt attorneys for plaintiff and Robert M. Mahoney of Geraghty, O'Loughlin & Kenney attorney for defendant, the Court Orders that:

a. Plaintiff's motion for an Order striking the defenses enumerated above as pleaded in defendant's answer is hereby granted.

b. Defendant's motion for an Order dismissing the plaintiff's Complaint for failure to state a claim for which relief can be granted is hereby denied.

c. Defendant's motion for an Order dismissing the plaintiff's Complaint on the basis the Court herein lacks personal jurisdiction of the defendant is hereby denied.

d. Defendant's motion for an Order granting summary judgment against plaintiff is hereby denied.

Dated this 27th day of May, 1977.

BY THE COURT

/s/ WILLIAM S. POSTEN
Judge of District Court

APPENDIX B

Hennepin County

No. 167

Lisa Blamey, a minor, by her mother and natural guardian, Shirley Blamey,

Respondent,

vs.

Thorwald Brown, a.k.a. Ted Brown, Ted Brown's Bar and Overshoe Club.

Appellant.

Scott, J., Took no part, Sheran, C. J.

Endorsed, Filed September 1, 1978, John McCarthy, Clerk Minnesota Supreme Court

SYLLABUS

1. Personal jurisdiction is established over a nonresident liquor vendor where it is shown that such is authorized by statute and is consistent with the due process requirements of the United States Constitution.

2. In reviewing the comprehensive scheme for regulating the Minnesota liquor industry, it appears only logical that the legislature did not intend to impose liability on liquor vendors in other states under the Civil Damage Act.

3. Therefore, since the Minnesota Civil Damage Act does not apply here, a common-law action for negligence lies.

4. Correlating the considerations as to the choice of law between Wisconsin's common law, which provides no remedy, and our common law, which does so provide, considerations of Minnesota's governmental interests and the better rule of law tip the scales in favor of applying Minnesota's common law.

Affirmed.

Heard before Yetka, Scott, and Wahl, JJ., and considered and decided by the court en banc.

OPINION

SCOTT, Justice.

This is an appeal by defendant Thorwald Brown from an order of the district court denying defendant's motions for dismissal and summary judgment and granting plaintiff Lisa Blamey's motion to strike *inter alia* defendant's defense of lack of personal jurisdiction. The district court also certified a choice of law issue as being important and doubtful pursuant to Rule 103.03(i) of the Rules of Civil Appellate Procedure. We affirm the district court's decision of the jurisdictional issue and remand for proceedings consistent with this opinion.

On the evening of October 23, 1974, plaintiff Lisa Blamey, a 15-year-old, attended a beer party in the Twin Cities area given by Patrick Michael (Mike) Martin, a 17-year-old. The party broke up at about 11 p.m. after the

beer supply had been exhausted. A group from the party, including plaintiff, got into Martin's sister's car and Martin decided that they should go to Wisconsin since liquor stores in the Twin Cities had closed by that time. He said he knew of a place in Wisconsin where beer could be obtained at that hour.

Accompanied by the plaintiff, Martin drove the car to Hudson, Wisconsin, where he purchased two twelve packs of strong beer at the Overshoe Club at approximately 1 a.m. At about 4 a. m., the car was involved in a one-car accident in Minnesota in which plaintiff was seriously injured.

At the time of the accident, plaintiff and Martin were residents of Minnesota. The Overshoe Club, also known as Ted Brown's Liquors, operated under a Class B liquor license issued by the city of Hudson, Wisconsin. The establishment was solely owned by defendant Thorwald Brown, then a Wisconsin resident, who has resided in Arizona since 1976.

The Overshoe Club sold intoxicating liquor and fermented malt beverages both on- and off-sale. The Club is located just off Interstate 94, within 15 miles of the Twin Cities area and is one of the first liquor establishments one reaches after exiting from the Interstate. It is located on the main street of Hudson, Wisconsin. Hudson is located on the Minnesota-Wisconsin border and the Twin Cities and Hudson are connected by the Interstate highway.

The Club is a neighborhood bar with no live entertainment, juke box, or game machines. The facility, which consists of a bar and three tables, could accommodate about 20 people. Defendant neither advertised in Minne-

sota nor attempted to attract Minnesota residents or young people to his establishment. He had no business connections in Minnesota and purchased the entire inventory for the bar in Wisconsin. Since defendant did not operate his establishment in Minnesota or any other state which had a similar civil damage act, Brown had not procured liquor liability insurance

Plaintiff brought the present action in Minnesota district court, alleging that defendant or his employees sold intoxicating liquors to Martin, a minor, in violation of, *inter alia,* the Minnesota Civil Damage Act, Minn. St. 340.95, and the Minnesota common law of negligence. The complaint was claimed to have been served pursuant to Minnesota's long-arm statute, Minnesota 543.19, subd. 1(c). Defendant's answer included an allegation that the Minnesota district court lacked personal jurisdiction over the defendant and plaintiff moved to strike this defense. Defendant also sought an order to dismiss the complaint on jurisdictional grounds and summary judgment. The district court granted plaintiff's motion to strike the jurisdictional defense and denied defendant's motions.

On appeal, defendant raises the issue of whether the Minnesota district court erred in holding that it had personal jurisdiction over him. The district court also certified the following issue to us as being important and doubtful pursuant to Rule 103.03(i) of the Rules of Civil Appellate Procedure: "Whether Minnesota's Civil Damage Act can be applied to impose liability on a Wisconsin bar owner for an illegal sale of intoxicating liquors allegedly made at his place of business in Wisconsin." The only issues on appeal then are the jurisdictional and choice of law issues.

1. To establish personal jurisdiction over a nonresident defendant, it must be shown that such is authorized by the terms of a statute and is consistent with the due process guarantees of the constitution. All Lease Co., Inc. v. Betts, 294 Minn. 473, 199 N.W. 2d 821 (1972). The statute under which plaintiff claims personal jurisdiction is Minn. St. 543.19, subd. 1(c), which provides in part:

> '* * * As to a cause of action arising from any acts enumerated in this subdivision, a court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over any * * * non-resident individual * * * in the same manner as if * * * he were a resident of this state. This section applies if * * * the * * * non-resident individual:
>
> * * * * *
>
> "(c) Committs any tort in Minnesota causing injury or property damage * * *."

Defendant contends that subdivision 1(d) and not 1(c) governs the present action. Subdivision 1(d) allows the exercise of personal jurisdiction over a nonresident if he:

> "(d) Commits any tort outside of Minnesota causing injury or property damage within Minnesota, if, (1) at the time of the injury, solicitation or service activities were carried on within Minnesota by or on behalf of the defendant, or (2) products, materials or things processed, serviced or manufactured by

the defendant were used or consumed within Minnesota in the ordinary course of trade."[1]

The constitutional due process standards applicable to this case are contained in Aftanase v. Economy Baler Co. 343 F. 2d 187, 197 (8 Cir. 1965), and Franklin Mfg. Co. v. Union Pacific R. Co. 297 Minn. 181, 210 N.W. 2d 227 (1973). See, also, Kulko v. Superior Court, 46 U.S.L.W. 4421, 4423 (1978). According to these decisions, the following criteria are to be applied when ascertaining whether jurisdiction over the person complies with due process: (1) The quantity of contacts with the forum state, (2) the nature and quality of the contacts, (3) the source and connection of the cause of action with those contacts, (4) the interest of the forum state in providing a forum, and (5) the convenience of the parties. Defendant contends that these factors when applied to the present situation mandate a finding of no personal jurisdiction in Minnesota.

Both the statutory and the constitutional issues relating to jurisdiction can be resolved on the basis of our recent decision in Anderson v. Luitjens, — Minn. —, 247 N.W. 2d 913 (1976), the facts of which closely parallel the facts of the case at hand. In Anderson, plaintiff Ross Anderson was injured in an automobile accident which occurred in

[1]The Minnesota Legislature recently amended subdivision 1(d) of Minn. St. 543.19 to provide: "* * * (d) Commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:

(1) Minnesota has no substantial interest in providing a forum; or
(2) the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice; or
(3) the cause of action lies in defamation or privacy." L. 1978, c. 780, § 2.

Minnesota approximately 3 miles north of the Minnesota-Iowa border. Anderson was a passenger in the car owned by Luitjens and driven by Wendy Johnson. Prior to the accident, 17-year-old Johnson had been served alcoholic beverages at defendant Charles Denker's tavern in Lake Park, Iowa. Lake Park is about 3 miles south of the state border line and about 10 miles from the accident site.

Anderson brought an action against Denker and others in Minnesota district court. That court ruled that Denker was not subject to in personam long-arm jurisdiction of a Minnesota court. In reversing the district court, we stated:

> "* * * Under traditional concepts of territoriality and proper jurisdiction, Minnesota courts would not have been able to entertain this case. But with the adoption of long-arm statutes such as those passed in Minnesota, thinking on the territoriality of law has given way to new jurisdictional ideas which, in our view, make the assertion of jurisdiction in this case consistent with traditional notions of fair play and substantial justice." — Minn —, 247 N.W. 2d 918.

In reaching this decision, we held that Minn. St. 543.19, subd. 1(c), was applicable to the facts of the case, stating that the test for whether or not a tort has occurred "in Minnesota" depends on whether damage from the alleged tortious conduct resulted in Minnesota. In the present case, defendant does not dispute that the injury to the plaintiff occurred in Minnesota and has presented no compelling argument why section 1(c) of Minn. St. 543.19 should not govern the present situation. We thus find no reason to abandon the principles set forth in Anderson on

this point, and hold that section 1(c), and not 1(d), is applicable to this case.

In Anderson, we then considered the due process aspects of the case and applied the five criteria set forth in Aftanase v. Economy Baler Co., *supra*, and Franklin Mfg. Co. v. Union Pacific R. Co., *supra*. As to the first criterion, the quantity of the contacts, we noted that Denker's main tangible contact with Minnesota was the fact that, according to Denker's own estimate, 8 percent of his business consisted of sales to Minnesota residents. Unlike Denker, the defendant herein has admitted no specific percentage of business with Minnesota residents. He contends that he did not know the residence of each of his customers but does not deny that he did business with Minnesotans. The record, however, shows that defendant's bar and off-sale liquor business was located on the main street of a border town close to an interstate highway. The Wisconsin laws regulating Brown's business allowed him to keep his off-sale enterprise open until 2 a.m., while off-sale liquor establishments located in Minnesota cities of the first class (which includes St. Paul and Minneapolis) and for a radius of 15 miles around such cities were required by Minnesota law to close at 8 p.m.—six hours before defendant was required by Wisconsin law to close.[2] These facts—

[2]Minn. St. 340.14, subd. 1, allows "off-sale" sales of intoxicating liquors in cities of the first class and in all cities located within a radius of 15 miles of cities of the first class between the hours of 8 a. m. and 8 p. m. on weekdays, between 8 a. m. and 10 p. m. on Saturdays, and prohibits sales on Sundays. October 23, 1974, was a weekday and thus Minnesota required "off-sale" stores to close by 8 p. m. Holders of Class B liquor licenses in Hudson, Wisconsin, however, were permitted by City of Hudson Municipal Code § 1301(9)(b) to make "off-sale" sales from 8 a. m. to 2 a. m. the next morning on weekdays and Saturdays and from noon to 2 a.m. on Sundays. Brown's off-sale business was thus allowed to remain open until 2 a. m. on the date of the accident.

the proximity to the state border, an interstate highway, and a large urban area and Wisconsin's more liberal liquor regulations—give rise to a reasonable inference that Brown had sufficient contacts with Minnesota residents so that the exercise of jurisdiction is reasonable, even though a specific percentage of business with Minnesotans cannot be identified.

The next factor we considered in Anderson was the source and connection of the cause of action with the contacts. We noted that the legal age for drinking alcoholic beverages in Iowa at the time of Anderson's accident was 19, while the legal age in Minnesota was 21. We commented:

> " ** * This difference was bound to attract young Minnesotans to Iowa's nearby establishments. From this it appears that a sufficiently large percentage of Denker's patrons were Minnesota residents for it to have been reasonable for him to foresee both that serving alcoholic beverages to a minor or to a person already intoxicated might lead to consequences such as those which resulted here and that those consequences might occur in Minnesota." — Minn. —, 247 N.W. 2d 916.

While the parties to the present action agree that the drinking age in both Minnesota and Wisconsin was 18 at the time of the accident, the difference in the hours liquor establishments were allowed to remain open, previously discussed, was bound to attract Minnesota minors to Wisconsin. In fact, in the present case, Martin's knowledge of this situation was the initial reason the group of young people headed to Wisconsin to make their purchase.

The interest of the state in providing a forum was the next standard discussed in Anderson, wherein we concluded that Minnesota had a sufficiently strong interest. Minnesota's interest is equally strong in the present case. Plaintiff is a lifelong Minnesota resident, who sustained injuries in Minnesota, resulting in the accumulation of hospital and physicians' bills with Minnesota creditors.

As to the final factor, the convenience of the parties, defendant argues that Minnesota is an inconvenient forum since he is now retired and permanently resides in Arizona. This fact, however, militates against defendant's interests. Since he now lives in Arizona, Wisconsin is not a convenient forum for any of the parties, and it is no more inconvenient for the defendant to participate in a trial in Hennepin County, Minnesota, than it would be for him to participate in a trial in Hudson, Wisconsin, a short distance from Hennepin County across the state border.

Consequently, on the basis of Anderson v. Luitjens, *supra*, we are compelled to hold that the district court properly asserted jurisdiction over defendant.

2. Pursuant to Rule 103.03(i) of the Rules of Civil Appellate Procedure, the district court certified to us the issue of whether Minnesota's Civil Damage Act, Minn. St. 340.95, can be applied to impose liability on defendant, a Wisconsin bar owner. Minn. St. 1974, §340.95, provides:

> "Every husband, wife, child, parent, guardian, employer, or other person who is injured in person or property, or means of support, by any intoxicated person, or by the intoxication of any person, has a right of action, in his own name, against any person who, by illegally selling, bartering or giving intoxicating liquors, caused the intoxication of such person, for all damages, sustained; and all damages recovered by a minor under this section shall be paid either to such minor or to his parent, guardian, or next friend, as the court directs; and all suits for damages under this section shall be by civil action in any court of this state having jurisdiction thereof."

At the time of the accident, Minn. St. 1974, §340.73, made it illegal to sell or give intoxicating liquor to any person under the age of 18. Minnesota's Act thus imposed strict liability upon anyone who sold or gave intoxicating liquor, including the type of beer sold to Martin, to any person under 18.

Wisconsin's civil liability statute, which defendant contends is the applicable law, is more restrictive than Minnesota's Act. Under Wis. St. Ann. 176.35, a person injured as the result of the intoxication of "any minor or habitual drunkard" has a right of action only against any person who has been "notified or requested in writing" by certain relatives of the minor or drunkard or government officials "not to sell or give intoxicating liquors to him and who, notwithstanding such notice or request, shall knowingly sell or give away intoxicating liquors, thereby causing the intoxication of such minor or drunkard." It is undisputed in this case that the notice required by the Wisconsin statute was not given and therefore plaintiff may not maintain a cause of action based upon it. See, Farmers Mutual Auto. Ins. Co. v. Gast, 17 Wis. 2d 344, 117 N.W. 2d 347 (1962). Thus, the choice of law in this case is "outcome determinative" since a conflict between the laws of Minnesota and Wisconsin exists. See, Meyers v. Government

Employees Ins. Co., 302 Minn. 359, 225 N.W. 2d 238 (1974).

Defendant argues, however, that it is unnecessary to invoke the choice of law principles since the legislature did not intend the Minnesota Civil Damage Act to impose liability upon a Wisconsin bar owner for an allegedly illegal sale of intoxicating liquor which took place in Wisconsin. Plaintiff asserts that our Act is applicable to "any person" who makes an illegal sale of intoxicating liquor regardless of where that person engages in business.[3] We agree with defendant.

While our Civil Damage Act is silent as to whether or not it imposes liability upon non-Minnesota liquor vendors, it seems only logical that the legislature intended the Act to be applicable only to Minnesota vendors who make illegal sales within Minnesota, and not to out-of-state liquor vendors.

Our Act, Minn. St. 340.95, is only one of over 100 provisions codified in Minn. St. Ch. 340 dealing with intoxicating liquors. The provisions contained in Chapter 340 constitute a comprehensive scheme for regulating Minnesota's liquor industry. Chapter 340 regulates such matters as licensing, retailing, wholesaling, age of consumption, importation, hours and days of sale, advertising, and taxation.

When viewed in light of these other provisions of Chapter 340 which regulate the Minnesota liquor industry, it is

[3]Plaintiff also cites Schmidt v. Driscoll Hotel, Inc., 249 Minn. 376, 82 N. W. 2d 365 (1957), for the proposition that our Act has extra-territorial application. In Schmidt, the alleged illegal sale took place in Minnesota, resulting in injury to a Minnesota plaintiff in Wisconsin. We held that our Act applied to the Wisconsin injury. Since Schmidt did not involve a nonresident seller, it is clearly distinguishable from the case at hand.

apparent that our Civil Damage Act was intended to be applicable only to Minnesota vendors. We feel the Minnesota legislature did not intend to impose strict liability under our Act on Wisconsin bar owners any more than it intended the licensing or taxation provisions of Chapter 340 to be applicable across the state boundary. Consequently, we hold that the Minnesota Civil Damage Act cannot be applied to impose liability on a Wisconsin bar owner for an illegal sale of intoxicating liquor, especially where the sale was made in Wisconsin.[4]

3. Although we have determined that Minnesota's Civil Damage Act is not operative in this case, the issue of whether Minnesota's theory of common-law negligence may be invoked remains. Two cases are relevant to this consideration—Trail v. Christian, 298 Minn. 101, 213 N. W. 2d 618 (1973), and Fitzer v. Bloom, — Minn. —, 253 N.W. 2d 395 (1977)

In Trail, *supra*, we held that a common-law negligence action would lie against a commercial vendor who illegally furnished a "nonintoxicating malt beverage" (3.2 beer). We expressly stated in Trail that the holding applied only to the illegal sale of 3.2 beer, which is not covered by the Civil Damage Act.

[4]We recognize that by disposing of the issue on grounds of statutory interpretation rather than upon common-law choice of law principles we depart from Professor Robert Leflar's suggestion that "[w]hen a statute is silent as to its extrastate applicability, a court may and should as appropriately look to all the relevant choice-of-law consideraions as if it were choosing between common-law rules" rather than resorting to statutory interpretation. See, Leflar, American Conflicts Law, 229-32 (1968). Although we adopted Leflar's five "choice-infuencing considerations" as our aprpoach to resolving conflict of law questions, we choose not to follow in the present case his suggestion as to when courts may engage in statutory construction, and thus avoid the necessity of invoking the five-factor analysis.

Subsequently, in Fitzer v. Bloom, *supra,* we considered "whether the common-law principles of Trail are to be extended into areas already covered by the Civil Damage Act or whether, by enacting the Civil Damage Act, the legislature has preempted the field." After citing Trail, we stated:

> "* * * Since the legislature has provided a remedy for the illegal sale of intoxicating liquor in the Civil Damage Act, the legislature has preempted the field and has provided the exclusive remedy in the act. *A common-law cause of action for negligence will only be allowed where the act does not apply.*" — Minn. —, 253 N.W. 2d 403. (Italics supplied.)

In the present case, the legislature obviously has not preempted the field since, as was previously resolved, our Act does not apply to a non-resident vendor. In light of our statements in Fitzer, *supra,* we hold that a common-law action for negligence lies in the case at hand since the Civil Damage Act is not applicable.

4. The final issue to be resolved is whether the common law of Minnesota or Wisconsin should be applied. Contrary to Minnesota's limited rule of common-law liability, Wisconsin allows no common law action. E. g., Garcia v. Hargrove, 46 Wis. 2d 724, 176 N.W. 2d 566 (1970).

The factors to be considered in resolving this conflict were adopted in Milkovich v. Saari, 295 Minn. 155, 203 N.W. 2d 408 (1973). The approach adopted in Milkovich was taken from a proposal of Professor Robert Leflar in Choice-Influencing Considerations in Conflicts Law, 41

N.Y.U. L. Rev. 267 (1966), and involves the application of five "choice-influencing considerations": (1) predictability of result; (2) maintenance of interstate and international order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interest; and (5) application of the better rule of law. The third consideration—simplification of the judicial task—has little application to the present situation, since any court is fully capable of administering Wisconsin's rule of non-liability. See, Milkovich v. Saari, *supra.*

Normally, the first consideration—predictability of result—is relatively unimportant in tort cases. Milkovich v. Saari, *supra.* It, however, acquires a greater importance in this case. This factor includes the idea that parties should know the legal consequences of their acts at the time they engage in a transaction. Leflar, Choice-Influencing Considerations in Conflicts Law, 41 N.Y.U. L. Rev. 267, 282 (1966). In the present situation, defendant failed to procure liquor liability insurance since he assumed that only the laws of Wisconsin created his liability. These laws impose no liability upon him in the present case and thus if Minnesota law is applied some injustice will result to the defendant since the legal ramifications of his actions were not predictable to him at the time he acted.

The maintenance-of-interstate-order consideration includes the requirement that the state whose laws are ultimately applied have sufficient contacts with the facts in issue. Milkovich v. Saari, *supra.* Here, Minnesota has strong contacts with the facts. The residence of the plaintiff and her creditors is in Minnesota. Her journey on the night of the accident started in Minnesota and ended here also. Minnesota thus has sufficient contacts with the facts

of the case. On the other hand, some ruffling of interstate relations might occur if Wisconsin law is applied and consequently maintenance of interstate order might be affected.

It is clear that Minnesota's governmental interest will be advanced by application of Minnesota law. Minnesota has a strong interest in compensating resident accident victims and a substantial interest in assuring that Minnesota creditors are paid. This consideration therefore strongly favors invoking Minnesota law.

The final consideration—the better rule of law—firmly supports the application of Minnesota's common law. In Trail v. Christian, *supra*, we expressly disapproved of the Wisconsin case, Garcia v. Hargrove, *supra*, which reaffirmed the Wisconsin common-law rule of non-liability. As between Wisconsin's law which provides no remedy and our law which does provide a remedy, we are convinced Minnesota has the better rule of law.

The correlation of these five considerations results in the conclusion that Minnesota's common law should be applied. The only consideration which weighs strongly in defendant's favor is the first—predictability of result. The maintenance-of-interstate-order consideration does not favor one state's law or the other, whereas the considerations of Minnesota's governmental interests and the better rule of law tip the scales in favor of the application of our own common law.

We therefore affirm the district court and remand for proceedings consistent with this opinion.

Affirmed and remanded.

MR. CHIEF JUSTICE SHERAN took no part in the consideration or decision of this case.

APPENDIX C

STATE OF MINNESOTA
OFFICE OF CLERK OF SUPREME COURT
ST. PAUL, MINN.

September 15, 1978

LISA BLAMEY, a minor, by her mother and natural guardian, SHIRLEY BLAMEY,

Respondent,

vs.

THORWALD BROWN, a.k.a. TED BROWN, TED BROWN'S BAR AND OVERSHOE CLUB,

Appellant.

SIR:

You will please take notice that on this date the following order was entered in the above entitled cause:

Application for reargument having been filed herein all further proceedings, except taxation of costs are stayed pending its determination.

Yours respectfully,

JOHN McCARTHY,
Clerk Supreme Court.

A petition for reargument does not stay taxation of costs and disbursements.

APPENDIX D

STATE OF MINNESOTA
OFFICE OF CLERK OF SUPREME COURT
ST. PAUL, MINN.

3 November 1978

LISA BLAMEY, a minor, by her mother and natural guardian, SHIRLEY BLAMEY,

Respondent,

vs.

THORWALD BROWN, a.k.a. TED BROWN, TED BROWN'S BAR AND OVERSHOE CLUB,

Appellant.

SIR:

You will please take notice that on this date the following order was entered in the above entitled cause:

ORDERED, that the petition for reargument herein be and the same hereby is denied and stay vacated.

Yours respectfully,

JOHN McCARTHY
Clerk Supreme Court

APPENDIX E

STATE OF MINNESOTA

ss

SUPREME COURT

MANDATE

THE STATE OF MINNESOTA

To the Honorable Judge and Officers of the District Court within and for the County of Hennepin Greeting:

WHEREAS, Lately in your Court, in action therein pending, entitled

LISA BLAMEY, a minor, by her mother and natural guardian, SHIRLEY BLAMEY,

Plaintiffs,

vs.

THORWALD BROWN, a/k/a TED BROWN, TED BROWN'S BAR AND OVERSHOE CLUB,

Defendant

a certain order was entered therein May 27, 1977 from which action of your Court an appeal thereafter was taken to this Court;

AND WHEREAS, The said cause came on to be heard before our Supreme Court, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the Court below herein appealed from, be, and the same hereby is, in all things affirmed and the case remanded for proceedings consistent with the opinion and that judgment be entered accordingly. A copy of the entry of judgment

thereupon in this Court is herewith transmitted and made part of this remittitur.

NOW THEREFORE, This MANDATE is to you directed and certified, to inform you of these proceedings in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby and herewith REMANDED to your Court for such other or further record and proceedings therein as may be by law necessary, just and proper, under and by virtue of the said order herein made.

WITNESS, The Honorable ROBERT J. SHERAN Chief Justice of the Supreme Court aforesaid, and the seal of said Court at St. Paul, this November 7, 1978.

JOHN McCARTHY
Clerk of the Supreme Court
By /s/ WAYNE TSCHIMPERLE
Deputy

STATE OF MINNESOTA, SUPREME COURT

LISA BLAMEY, a minor, by her mother and natural guardian, SHIRLEY BLAMEY,

Respondent,

vs.

THORWALD BROWN. a.k.a. TED BROWN, TED BROWN'S BAR AND OVERSHOE CLUB,

Appellant.

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the

order of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Hennepin be and the same hereby is in all things affirmed and the case is remanded for proceedings consistent with the opinion, a certified copy of which is attached hereto.

And it is further determined and adjudged that respondent herein, do have and recover of appellant herein the sum and amount of Three Hundred Eighteen and 12/100 DOLLARS, ($318.12) costs and disbursements in this cause in this Court, and that, execution may be issued for the enforcement thereof.

Dated and signed November 7, 1978.

BY THE COURT

Attest:
JOHN McCARTHY
Clerk

STATEMENT FOR JUDGMENT

Statutory Costs—$25.00, Printer—$293.12,

Total $318.12

Satisfaction of Judgment filed

Therefore the above judgment is duly satisfied in full and discharged of record.

Attest:
Clerk

SUPREME COURT

ss

State of Minnesota

I, John McCarthy, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul November 7, 1978.

JOHN McCARTHY
Clerk
By /s/ WAYNE TSCHIMPERLE
Deputy

IN THE

Supreme Court of the United States

——— TERM, 1979

No. 78-1100

LISA BLAMEY, a minor, by her mother and natural guardian, SHIRLEY BLAMEY,

Plaintiff-Respondent,

vs.

THORWALD BROWN, a/k/a TED BROWN, TED BROWN'S BAR AND OVERSHOE CLUB,

Defendant-Petitioner.

On Appeal From the Supreme Court of Minnesota

PLAINTIFF-RESPONDENT'S BRIEF

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1979—Northwest Brief Printing Co., 316 Chicago Avenue, Minneapolis 55415—338-5078

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IN THE

Supreme Court of the United States

——— TERM, 1979

No. ———

LISA BLAMEY, a minor, by her mother and natural guardian, SHIRLEY BLAMEY,

Plaintiff-Respondent,

vs.

THORWALD BROWN, a/k/a TED BROWN, TED BROWN'S BAR AND OVERSHOE CLUB,

Defendant-Petitioner.

On Appeal From the Supreme Court of Minnesota

PLAINTIFF-RESPONDENT'S BRIEF

QUESTION PRESENTED

This is a civil action brought in Minnesota under Minnesota's Civil Damage Act, Minnesota Statutes, Section 340.95, and common law negligence, arising from a sale of alcoholic beverages in Wisconsin which subsequently caused or contributed to personal injury to Plaintiff in Minnesota. The question presented for review is whether the Defendant-Petitioner tavern owner, whose tavern (1) is located on the Wisconsin side of the Minnesota-Wisconsin border, (2) is directly connected to the large urban

area of Minneapolis-St. Paul by Interstate 94 and is within 15 miles of that urban area, (3) directly benefits from the monopoly on the late evening sales of alcohol beverages once the Minnesota liquor establishments close due to the difference between Minnesota and Wisconsin laws regulating the hours of business for off-sale liquor establishments and benefits from the historical lower legal drinking age in Wisconsin, and (4) committed a foreseeable tort in Minnesota by making an illegal sale of alcoholic beverages to a Minnesota minor who, while intoxicated, caused an automobile accident in Minnesota resulting in injury to a Minnesota resident, had sufficient minimum contacts for the Minnesota Court to exercise jurisdiction over him consistent with the due process clause of the Fourteenth Amendment.

CONSTITUTIONAL PROVISION INVOLVED

The constitutional basis for this Petition is the United States Constitution, Amendment Fourteen, Section One, which provides as follows:

> "All persons born or naturalized in the United States, subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE FACTS

On the evening of October 23, 1974, plaintiff Lisa Blamey, a 15 year old, attended a beer party in the Twin

Cities area given by Patrick Michael (Mike) Martin, a 17 year old. The party broke up at about 11:00 p m. after the beer supply had been exhausted. A group from the party, including plaintiff, got into Martin's sister's car and Martin decided that they should go to Wisconsin since liquor stores in the Twin Cities had closed by that time. He said he knew of a place in Wisconsin where beer could be obtained at that hour.

Accompanied by the plaintiff, Martin drove the car to Hudson, Wisconsin where he purchased two 12-packs of strong beer at the Overshoe Club at approximately 1:00 a.m. At about 4:00 a.m., the car was involved in a one car accident in Minnesota in which plaintiff was seriously injured. At the time of the accident, plaintiff, Martin and all other occupants of the automobile driven by Martin were residents of Minnesota.

The Overshoe Club, also known as Ted Brown's Liquors, sold intoxicating liquor and fermented malt beverages both on and off-sale. The bar is located just off Interstate 94, within 15 miles of the Twin Cities area and is one of the first liquor establishments one reaches after exiting from the Interstate. It is located on the main street of Hudson, Wisconsin. Hudson is located on the Minnesota-Wisconsin border and the Twin Cities and Hudson are connected by the Interstate Highway.

ARGUMENT

THE CONTACTS BETWEEN DEFENDANT AND FORUM STATE SATISFY THE TRADITIONAL NOTIONS OF FAIR PLAY AND SUBSTANTIAL JUSTICE.

The Minnesota Supreme Court has specifically stated that enacting the long-arm statutes, the legislature intended "to extend the extraterritorial jurisdiction of [the State's] courts to the maximum limit consistent with constitutional limitations". *Hunt vs. Nevada State Bank,* 285 Minn. 77, 172 N.W. 2d 292 (1969). Accordingly, the federal courts have recognized that both M.S.A. Section 303.13 and Section 543.19 are to read expansively. See e.g., *B & J Manufacturing Company vs. Solar Industries, Inc.,* 483 F. 2d 594, 597 (8th Cir. 1973); *Williams vs. Connolly,* 2207 F. Supp. 539, 542 (D. Minn. 1964).

In determining the constitutionality of allowing jurisdiction over non-residents under state "long-arm" statutes the Supreme Court of the United States has focused on three primary factors: namely, the quantity of the contacts the defendant has with the forum state; the nature and quality of those contacts; and the source and connection of the cause of action with those contacts. Two other factors, the interest of the forum state in providing a forum and the convenience of the parties, are also considered. *Aftanese vs. Economy Bailer Co.,* 343 F. 2d 187 (8th Cir. 1965).

As to the first and second criteria, the quantity, and the nature and the quality of contacts, petitioner's establishment is one of the first off-sale liquor stores one comes to when driving from Interstate 94 down the main street of Hudson, Wisconsin, which in turn is the first Wisconsin town across the Minnesota border on Interstate 94

from St. Paul and Minneapolis. Also, Minnesota residents desirous of buying beer late at night had to go to Wisconsin to purchase it because of the difference between Minnesota and Wisconsin off-sale liquor laws. On October 23, 1973, Minnesota law required off-sale liquor stores to close at 8:00 p.m. while the corresponding Wisconsin law allowed off-sale establishments to remain open until 2:00 o'clock a.m. Therefore, petitioner's proximity to the state border, an Interstate Highway connecting the large urban area of Minneapolis-St. Paul and Wisconsin, and the "monopoly" Wisconsin had on late night beer sales were bound to attract Minnesota residents to Wisconsin. The past experience of Wisconsin bars opening their business to Minnesota minors when the drinking age in Wisconsin was lower than in Minnesota was certainly a purposeful attempt to attract Minnesota residents to purchase liquor.[1] While we cannot be certain of the quantity of such contacts the petitioner may have had with Minnesota residents, we can reasonably assume that petitioner had numerous contacts with Minnesota residents other than the single contact that precipitated this lawsuit. The consequences of an accident and injury to someone such as the respondent in this case was certainly foreseeable.

The next factor for consideration is the source and connection of the cause of action with the defendant's con-

[1]It is true that on October 23, 1974, the date of the accident, Minnesota and Wisconsin both had legal drinking ages of 18. However, Minnesota did not lower its liquor age from 21 to 18 until June 1, 1973, while Wisconsin's had been 18 (for beer) for decades. Minnesota raised its drinking age to 19 effective September 1, 1976, while Wisconsin's remains at 18, so that age difference is again present today. Minnesota Statutes 340.035, Subd. 1, Minnesota Statutes 340.73, Subd. 1, Minnesota Statutes 340.14(1)(a) and Minnesota Statutes 645.45(3) and Wisconsin Statutes Section 66.054(9)(b), Wisconsin Statutes 176.30(1).

tacts with the forum state. Defendant operates an off-sale liquor establishment less than one mile from the Wisconsin-Minnesota border. In *Anderson vs. Luitjens,* — Minn. —, 247 N.W. 2d 913 (1976) the Minnesota Supreme Court ruled that it did have jurisdiction under M.S.A. Section 543.19 Subd. 1(c) over an Iowa liquor establishment which sold intoxicating liquors to a Minnesota minor who returned to Minnesota and, because of his intoxication, had an accident in Minnesota causing injury to a Minnesota plaintiff who was a passenger in the minor's vehicle. In *Anderson,* the Minnesota Supreme Court stated:

> "This difference [between the legal drinking age of 18 in Iowa and 21 in Minnesota] was bound to attract young Minnesotans to Iowa's nearby establishments. From this it appears that a sufficiently large percentage of [defendant's] patrons were Minnesota residents for it to have been reasonable for him to foresee both that serving alcoholic beverages to a minor or to a person already intoxicated might lead to consequences such as those which resulted here and that those consequences might occur in Minnesota," *id.* at 916.

As the Minnesota Supreme Court stated below in the present action:

> "While the parties to the present action agree that the drinking age in both Minnesota and Wisconsin was 18 at the time of the accident, the difference in the hours liquor establishments were allowed to remain open, previously discussed, was bound to attract Minnesota minors to Wisconsin. In fact, in the present case, Martin's knowledge of the situation was

> the initial reason the group of young people headed to Wisconsin to make their purchase," (Petitioner's brief Appendix p. A-11).

As can be seen, one of defendant's contacts with the State of Minnesota is the source of this cause of action. Therefore, this factor, the source and connection of the cause of action with the contacts, is clearly satisfied.

The interest of the state in providing a forum is the next factor of analysis. Plaintiff is a lifelong Minnesota resident who sustained serious injuries in Minnesota resulting in an accumulation of hospital and physician's bills with Minnesota creditors. Plainly Minnesota has a manifest interest in providing a forum for its residents when they are injured by torts committed within Minnesota.

The final standard, convenience of the parties, also points to allowing personal jurisdiction in Minnesota. Since petitioner now lives in Arizona it would not be convenient for any party to have the case in Wisconsin. Since respondent and most, or all, of the potential witnesses live in Minnesota, Minnesota is clearly preferable to Arizona as well as to Wisconsin in this regard.

Petitioner argues that the concept of "long-arm" jurisdiction over non-residents must be limited by the opinion of the Court in *Hanson vs. Denkla,* 357 U.S. 235 (1958). There the transaction at issue, the execution of a trust and the delivery of the trust corpus, occurred entirely outside the state asserting jurisdiction. In *Hanson* the Court gave weight to the fact that the cause of action was not one that arose out of an act done in the forum state, and observed, that, in that respect, it differed from *McGee vs. International Life Insurance Company,* 355 U.S. 220 (1957). In

contrast with *Hanson*, the Minnesota Supreme Court found that the defendant in this case committed a tort, which is the "transaction at issue" in this case, in Minnesota by applying the standard test for determining where a tort occurred of "whether damage from the alleged tortious conduct resulted in Minnesota". Petitioner has committed a tort in Minnesota, the nature of which was readily foreseeable. Petitioner also has ample other "minimum contacts" with the State of Minnesota and should be required to submit to the jurisdiction of Minnesota's Courts.

To construe the language of *Hanson* requiring that there be some act by which the defendant "purposefully" avails himself of the privilege of conducting activities within the forum state strictly would undermine the notion that the facts of each case must be examined to determine whether it is fair to exercise jurisdiction over the defendant; to make the requirement of purposeful activity within the state a necessary prerequisite to personal jurisdiction in all cases revitalizes the "implied consent" theory emasculated by *International Shoe Company vs. State of Washington,* 326 U.S. 310 (1945) and reverses the trend expanding state jurisdiction over non-residents; and to limit jurisdiction to defendants who "purposefully" conduct activities within the state is clearly erroneous in suits involving tortious or negligent conduct, such as this case, because it is unrealistic to say that the actors first considered the laws of the state in which such acts were committed. Surely, justice would not be served, especially in suits involving negligent or tortious conduct, by reading the due process clause of the Fourteenth Amendment as requiring more contacts or contacts of a different nature than those involved in the present suit.

In *Deveny vs. Rheem Manufacturing Company,* 319 F 2d 124, 127 (2d Cir. 1963), a suit brought against an out-of-state water heater manufacturer after one of its water heaters had exploded and injured plaintiff's daughter, the court stated, "the long-arm of State Courts is permitted to reach out-of-state defendants only in suits growing out of acts which have created contacts with the forum state, however limited or transient such contacts may be". Defendant's contacts with Minnesota were much more substantial than merely being "limited or transient". Defendant's off-sale liquor establishment was located in very close proximity to the Minnesota-Wisconsin border. The large urban area of Minneapolis-St. Paul was close by and directly connected to Hudson, Wisconsin by Interstate 94. Defendant's bar held a "monopoly" on late night beer sales due to the difference between Minnesota and Wisconsin state laws, and the tort committed by defendant was of a highly foreseeable nature. It comports with the traditional notions of fairplay and substantial justice that defendant be subject to the jurisdiction of Minnesota courts.

CONCLUSION

Plaintiff-Respondent urges the Court to deny the petition for a Writ of Certiorari in this case or in the alternative, affirm in all respects the Judgment and Decree of the Minnesota Supreme Court.

Respectfully submitted,

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